

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION**

JOHN DUDEK, *et al.*,

Plaintiffs,

v.

BALFOUR BEATTY COMMUNITIES
LLC, *et al.*,

Defendants.

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Case No. 5:24-cv-01162-XR

PLAINTIFFS' REPLY IN SUPPORT OF MOTION FOR REMAND

Plaintiffs file this Reply to Defendants' Opposition and Amended Opposition [Dkts. 13 and 14] to Plaintiffs' Motion for Remand [Dkt. 11], and in support hereof respectfully show the Court the following:

Remand is required in this case because Defendants have failed to demonstrate that this Court has jurisdiction. Even if the Court chooses to look beyond the four corners of the Complaint, Defendants failed to carry their burden – both in the Notice of Removal and in the Response to the Motion for Remand – to prove the existence of enclave jurisdiction.

First and foremost, while Defendants have presented several deeds for property that comprises some of Fort Bliss and Lackland Air Force Base, there is no evidence that these deeds comprise the entirety of Fort Bliss and Lackland AFB, and, most importantly, there is no evidence that the houses at issue are located on the real property that is described in the deeds offered by Defendants. As set forth in the Motion, Fort Bliss and Lackland are among the military installations with mixed jurisdictional status. *See Motion* at Section IV.4.a.-b. (detailing the

same). Without evidence in the record to establish that this Court could have jurisdiction, the Court must remand.

Second, Defendants have offered no evidence other than their *ipse dixit* say-so that the Federal Government accepted the cession of legislative jurisdiction and that it continues to exercise legislative jurisdiction. *See Adams v. United States*, 319 U.S. 312, 313 (1943) (“Unless and until the United States has accepted jurisdiction over lands hereafter to be acquired as aforesaid, it shall be conclusively presumed that no such jurisdiction has been accepted.”) (citing 40 U.S.C. § 255, predecessor statute to 40 U.S.C. § 3112, which requires the same). Again, without this evidence, there is no basis for this Court exercising jurisdiction and the Court must remand.

Finally, as to Defendants’ argument that the Fifth Circuit has held that at least portions of Fort Bliss are federal enclaves, the argument misses the point. The question is not whether Fort Bliss or portions thereof qualify as a federal enclave, but whether exclusive federal legislative jurisdiction, and by extension, federal question jurisdiction, applies with respect to the portion of the enclave at issue (i.e., the portion where the housing unit is located). The Fifth Circuit did not conclusively make such a determination in any of the cases cited by Defendants, and even if it did, this Court must re-examine the issue because the evidence in this case does not conclusively prove jurisdiction.

PRAYER

WHEREFORE, PREMISES CONSIDERED, Plaintiffs respectfully request that the Court grant their Motion for Remand [Dkt. 11], and grant Plaintiffs such other and further relief, at law or in equity, as the Court deems to be just, proper, and equitable.

Dated: November 22, 2024

Respectfully submitted,

GUERRA LLP

875 East Ashby Place
Suite 1200
San Antonio, Texas 78212
Telephone: (210) 447-0500
Facsimile: (210) 447-0501

By: /s/ Francisco Guerra, IV.

FRANCISCO GUERRA, IV.

State Bar No. 00796684

fguerra@guerrallp.com

ROBERT BRZEZINSKI

State Bar No. 00783746

rbrzezinski@guerrallp.com

JENNIFER NEAL

State Bar No. 24089834

jneal@guerrallp.com

BAILEY E. VANNATTA

State Bar No. 24119113

bvannatta@guerrallp.com

JULIE A. MATSEN

State Bar No. 24115654

jmatsen@guerrallp.com

And

PULMAN, CAPPUCCIO & PULLEN, LLP

2161 NW Military Highway

Suite 400

San Antonio, Texas 78213

Telephone: (210) 222-9494

Facsimile: (210) 892-1610

RANDALL A. PULLMAN

State Bar No. 16393250

rpulman@pulmanlaw.com

RYAN C. REED

State Bar No. 24065957

rreed@pulmanlaw.com

And

LAW OFFICES OF JAMES R. MORIARTY

4119 Montrose, Suite 250

Houston, Texas 77006

Telephone: (713) 528-0700

Facsimile: (713) 528-1390

JAMES. R. MORIARTY
State Bar No. 14459000
jim@moriarty.com

ATTORNEYS FOR PLAINTIFFS

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing instrument has been forwarded to all counsel of record as set forth below, in compliance with the Federal Rules of Civil Procedure on the 22nd day of November, 2024. using the CM/ECF system which will serve copies on the following:

Michelle R. Gilboe
Elena D. Harvey
LEWIS BRISBOIS BISGAARD & SMITH LLP
Wells Fargo Center
90 South 7th Street, Suite 2800
Minneapolis, Minnesota 55402
Telephone: 612.428.5000
Facsimile: 612.428.5001

Counsel for Defendants

/s/ Francisco Guerra, IV.
FRANCISCO GUERRA, IV.